

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12508 of Christ Episcopal Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.45 to permit a community center operated by Zocalo, Inc., in the R-3 District in the basement of the Christ Episcopal Church at 3116 "O" Street, N. W., (Square 1243, Lot 823).

HEARING DATE: October 25, 1977
DECISION DATE: November 2, 1977

FINDINGS OF FACT:

1. The Board, for good cause shown, waived Section 3.33 of the Supplemental Rules of Practice and Procedure which requires that an affidavit be filed not less than five days prior to the public hearing on an application attesting that the property has been posted at least ten days in advance of the hearing. The property was posted in accordance with the rules.
2. By Order No. 12301, dated June 6, 1977, the Board denied an application by the same party, for the same premises, to establish the same kind of operation requested by this application. In the prior application the relief requested was brought under Paragraph 8207.11 for a use variance.
3. In the subject application the relief requested is brought under Sub-section 8207.2 for a special exception.
4. Section 5.6 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment states that an applicant whose application has been denied shall not institute a new application essentially on the same facts within one year from the date of the Order of the previous application.
5. Applicant argued that Rule 5.6 is ambiguous and does not clearly preclude the subject application, that the term "on the same facts" can be read to mean jurisdictional facts rather than substantive facts and that since the jurisdictional facts underlying the special exception Sub-section and the variance paragraph of the Regulations are obviously different, proceeding under one should not be held to bar proceeding under the other.

6. Applicant further argued that the Board under Rule 1.3 may, for good cause shown, waive any of the provisions of these rules, if not otherwise prohibited by law. Applicant stated that the good cause for such waiver was demonstrated and requested that the subject application be favorably considered.

7. The Chair permitted the subject application to be heard on its merits at the hearing but reserved the right of the Board to invoke its right not to hear the application and decide it but to dismiss it.

CONCLUSIONS OF LAW:


Based on the record of the transcript and file of the hearing of February 16, 1977 and based upon the transcript of the hearing of October 25, 1977 the Board finds that the subject application, in addition to the same parties, same location and same relief sought is based essentially on the same facts as the prior application No. 12301. The fact that applicant seeks his relief in the subject application through a different section of the Regulations than in the prior application does not change the basic facts involved. The Board concludes that the subject application is barred under the provisions of Section 5.6 of the Rules. A new application on the subject matter cannot be brought within one year of June 6, 1977. Accordingly, it is ORDERED that this application is DISMISSED.

VOTE:

3-1 (William F. McIntosh, Charles R. Norris and Leonard L. McCants to dismiss, Chloethiel Woodard Smith to deny).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

2 DEC 1977

Accordingly, it is ORDERED that the application is GRANTED and that a copy of the applicant's letter of November 8, 1977, marked as Exhibit 21 in the record, relating to the applicant's plans for the relocation of the present tenants of the housing to be rehabilitated and their option to purchase the new units be attached to the Order and is made a part thereof.

VOTE: 5-0: (Chloethiel Woodard Smith, Walter B. Lewis, William F. McIntosh, Charles R. Norris and Leonard L. McCants)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 19 DEC 1977

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.